

**ENTERED**

February 23, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

JOSE MARTIN VILLELA,

Petitioner,

VS.

BOBBY LUMPKIN,

Respondent.

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Civil Case No. 6:21-CV-00060

ORDER ACCEPTING  
FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the June 22, 2022 Memorandum and Recommendation (“M&R”) prepared by Magistrate Judge Mitchel Neurock. (Dkt. No. 22). Magistrate Judge Neurock made findings and conclusions and recommended that Respondent’s Motion to Amend his Habeas Petition be Denied. (Dkt. No. 18).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). On July 1, 2022, Petitioner filed two objections. (Dkt. No. 26). First, Petitioner objects to Judge Neurock’s conclusion that amendment of his habeas petition is futile because Petitioner argues that statutory tolling applies to his case. (*Id.* at 2). Second, Petitioner objects to Judge Neurock’s conclusion that amendment of his habeas petition is futile because Petitioner argues that he is actually innocent of his underlying offense. (*Id.* at 2–3).

In accordance with 28 U.S.C. § 636(b)(1)(C), the Court is required to “make a de novo determination of those portions of the [magistrate judge’s] report or specified

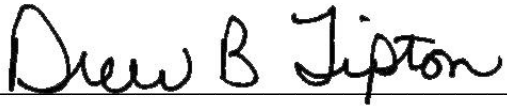
proposed findings or recommendations to which objection [has been] made.” After conducting this de novo review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; *see also* Fed. R. Civ. P. 72(b)(3).

The Court has carefully considered de novo those portions of the M&R to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding no error, the Court accepts the M&R and adopts it as the opinion of the Court. It is therefore ordered that:

- (1) Magistrate Judge Mitchel Neurock’s M & R (Dkt. 22) is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court; and
- (2) Petitioner’s Motion to Amend his Habeas Petition (Dkt. 18) is **DENIED**.

It is SO ORDERED.

Signed on February 23, 2023.

  
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DREW B. TIPTON  
UNITED STATES DISTRICT JUDGE